

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

DOCKET NO. 3:05-CV-316

**ROBERT LOWINGER, Individually and)
On Behalf of All Others Similarly)
Situating,)
)
Plaintiff,)
vs.)
)
EUGENE B. JOHNSTON, DANIEL G.)
BERGSTEIN, KELSO INVESTMENT)
ASSOCIATES V, L.P., FRANK K.)
BYNUM, GEORGE E. MAELICH,)
KELSON & COMPANY and)
FAIRPOINT COMMUNICATIONS,)
INC.)
)
Defendants.)
)**

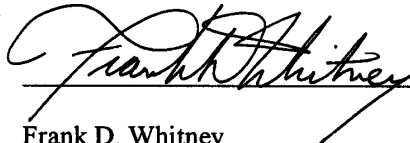
ORDER

THIS MATTER is before the Court on Plaintiff's separate Objections (Doc. Nos. 13, 43) to the Memorandum and Order ("M&O") of United States Magistrate Judge Carl Horn, III (Doc. No. 11), denying Plaintiff's motion to remand, and to the Memorandum and Recommendation ("M&R") of Magistrate Judge Horn (Doc. No. 40), recommending that Defendant's motion to dismiss be granted. While there is a dispute as to the appropriate standard of review to be applied (owing to Plaintiff's one day delay in filing a second set of objections due to technical problems), the Court will apply a de novo standard because in this case the standard of review is not outcome-determinative. Upon de novo review of the record, it is evident that Plaintiff's objections to the M&R and M&O contain the same arguments presented to and decided by the magistrate judge. Further, the magistrate judge correctly decided all legal issues presented to the Court. Plaintiff has

presented no new legal authority to show otherwise. Finding no error, the Court accepts the magistrate judge's recommendations and adopts the magistrate judge's prior orders as the Court's own. Accordingly, Plaintiff's complaint must be dismissed with prejudice. The Clerk is directed to close the case.

IT IS SO ORDERED.

Signed: August 15, 2007


Frank D. Whitney
United States District Judge

